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LEGISLATION: PREPARING FOR THE ATP EXAM

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Learning Objectives

1. The participant will be able to describe the Americans with Disabilities Act (ADA) and how this impacts people with disabilities.
2. The participant will be able to describe the Individuals with Disabilities Education Act (IDEA) and how this impacts people with disabilities.
3. The participant will be able to describe the Technology Related Assistance for Individuals with Disabilities Act (Tech Act) and how this impacts people with disabilities.

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What we will be covering:

- Legislation
- Funding

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The ATP Certification

- The Assistive Technology Professional (ATP) certification is offered through the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)
- This demonstrates a basic level of competence in the practice area of Assistive Technology
 - Over 4000 people hold the ATP certification
- This series of courses will include information to prepare the candidate for this examination



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The ATP Certification

- The candidate must fulfill specific pre-requisites before taking the examination
- For Occupational Therapy Practitioners with a Bachelor's or Master's degree, 1000 hours of work experience is required over 6 years.
- For further information:
 - <http://www.resna.org/get-certified/exam-eligibility-requirements>



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Legislation

- Legislation:
 - Rehabilitation Act
 - Individuals with Disabilities Education Act (IDEA)
 - Individuals with Disabilities Education Improvement Act (IDEIA)
 - Americans with Disabilities Act
 - ADAAA
 - Assistive Technology Act (Tech Act)
 - Workforce Investment Act
 - Workforce Innovation and Opportunity Act

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Rehabilitation Act

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Rehabilitation Act

- **The Rehabilitation Act**
- **1973**
- **Prohibits discrimination** on the basis of disability in programs run by **federal** agencies, programs that receive federal financial assistance, in federal employment, and in the employment practices of federal contractors.

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Rehabilitation Act

- Title I - Vocational Rehabilitation Services
- Title II - Research and Training
 - National Institute on Disability and Rehab Research (NIDRR)
- Title III - Professional Development, Special Projects and Demonstrations
- Title IV - National Council on Disability
- Title V - Rights and Advocacy
- Title VI - Employment Opportunities for Individuals with Disabilities
- Title VII - Independent Living Services and Centers for Independent Living

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Rehabilitation Act

- Title V - Rights and Advocacy
 - Sec 501. Employment of Individuals with Disabilities
 - Sec 502. Architectural and Transportation Barriers Compliance Board
 - Sec 503. Employment Under Federal Contracts
 - Sec 504. Nondiscrimination Under Federal Grants and Programs
 - Sec 508. Electronic and Information Technology
 - Sec 509. Protection and Advocacy of Individual Rights

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Rehabilitation Act

- Title VI - Employment Opportunities for Individuals with Disabilities
 - Sec 601. Projects with Industry
 - Sec 602. Supported Employment

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IDEA

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Individuals with Disabilities Education Act

- **IDEA**
- Original Public Law 94-142 (**1975**)
- Basic premise: All children have a right to a **"free and appropriate education"**
- **"Least restrictive environment"**
- Includes **Individual Education Plan (IEP)**
- Includes Individual Family Services Plan (IFSP) for birth to three years old



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Individuals with Disabilities Education Act

- Part A - General Provisions
- Part B - Assistance for Education of All Children with Disabilities
- Part C - Infants and Toddlers With Disabilities
- Part D - National Activities To Improve Education of Children With Disabilities
 - Personnel preparation, parent training, technical assistance, model demonstration projects and dissemination of information



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Individuals with Disabilities Education Act

- Public Law 108-446 Individuals with Disabilities Improvement Act of **2004 (IDEIA)**
- IDEIA aligns IDEA with **No Child Left Behind (2001)**



**Individuals with Disabilities
Education Improvement Act**



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ADA

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Americans with Disabilities Act

- Public Law 101-336, passed **1990**
- **Civil rights law** for people with disabilities
- Prohibits **discrimination** on the basis of disability in employment, public services, public accommodations, and telecommunications.
- NOT an entitlement program



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Americans with Disabilities Act

• Title I – Employment

- Requires employers with 15 or more employees to provide “qualified individuals with disabilities” an **equal opportunity** to benefit from the full range of employment-related opportunities available to others.
- Requires employers to provide “**reasonable accommodations**”
 - Exceptions
 - “Undue Hardship”
 - “Direct Threat”
- Enforcement by Department of Justice, Equal Employment Opportunity Commission (EEOC)

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Americans with Disabilities Act

• Title II – State and Local Government Activities

- Covers all activities of state and local governments regardless of the government entity's size or receipt of federal funding
- Requires that **state and local governments** give people with disabilities an **equal opportunity** to benefit from all of their programs, services, and activities
 - Examples: Public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings
- Enforcement by Department of Justice

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Americans with Disabilities Act

• Title II – Public Transportation

- Covers **public transportation services**, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak)
- Public transportation authorities **may not discriminate** against people with disabilities in the provision of their services.
- **Paratransit** is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations.
- Enforcement by Department of Transportation

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Americans with Disabilities Act

• Title III – Public Accommodations

- Covers businesses and nonprofit service providers that are **public accommodations**, privately operated entities that provide products and services to the public.
- Businesses must comply with **basic nondiscrimination requirements** that prohibit exclusion, segregation, and unequal treatment.
- Must comply with **ADA architectural standards**
- Make “**reasonable modifications**” in their policies, practices and procedures to avoid discrimination, unless they can demonstrate that a modification would fundamentally alter the nature of their service, program or activity
- Enforcement by Department of Justice
- Adopted amendment (ADAAA of 2008)

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Americans with Disabilities Act

Summary:

- **ADA**, passed in **1990**
- **Civil rights** for people with disabilities
- Title I: employment
- Title II: state and local government activities, public transportation
- Title III: public accommodations
- Title IV: telecommunications
- Title V: miscellaneous provisions

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ADAAA

- The Americans with Disabilities Act **Amendments Act**
- **2008**
- **Broadened the definition of disability** to the maximum extent permitted by the ADA
- “A physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such impairment; or being regraded as having such an impairment.”
- Makes it easier for an individual to establish that he or she has a disability

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Tech Act

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Assistive Technology Act

- **Assistive Technology Act**
- **1988**
- **Reauthorized in 1994, 1998, 2004**
- Provides **federal funding** from the U.S. Department of Education to each state and territory to support "State efforts to **improve the provision of assistive technology** to individuals with disabilities of all ages through comprehensive statewide programs of technology-related assistance."
- 56 State AT programs

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Assistive Technology Act

- First legally **defined** "assistive technology device" and "assistive technology service"
- Maximizes the ability of individuals with disabilities and their family members, guardians, advocates and authorized representatives to **obtain assistive technology devices and assistive technology services**

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Assistive Technology Act

- Funds **cannot be used for direct payment** for an AT device for an individual with a disability
- Federal and state agencies are not authorized to reduce medical or other assistance or alter eligibility for a benefit or service under any federal law as a result of the Tech Act.
- Funds received through the grant are used to **supplement**, and not supplant, funds available from other sources for technology related assistance

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Assistive Technology Act

- State Level Activities
 - State finance systems (includes **alternative finance** programs)
 - Device **reutilization** programs
 - Device **loan** programs
 - Device **demonstrations**
- State Leadership Activities
 - **Training** and technical assistance
 - Public awareness and information and referral
 - Public advocacy
 - Coordination and collaboration



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Assistive Technology Act

- **2004 Amendments** to Assistive Technology Act of 1998
- Requires States to provide **direct aid** to individuals with disabilities to ensure they have access to the technology they need.
- Assistive Technology **reutilization** programs, assistive technology **demonstration** programs, alternative **financing** programs, device **loan** programs.

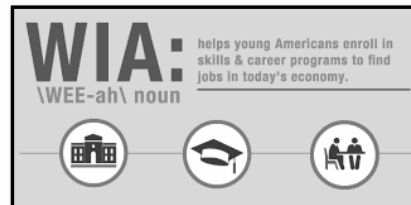
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WIA

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Workforce Investment Act

- **WIA**
- Public Law 105-220 (**1998**)
- Title I - Workforce Investment Systems
- Title II - Adult Education and Literacy
- Title III - Workforce Investment-Related Activities
- Title IV - Rehabilitation Act Amendments of 1998
- Title V - General Provisions



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Workforce Investment Act

- **WIA**
- “provides **workforce investment activities**, through statewide and local workforce investment systems, that **increase the employment, retention, and earnings** of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.”



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Workforce Investment Act

- **WIA**
- Replaced Job Training Partnership Act (1982) and some earlier legislation

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The Workforce Innovation and Opportunity Act (WIOA)

- **WIOA 2014**
- **Replaces** the Workforce Investment Act of 1998
- **Improves Services to Individuals with Disabilities**
 - Physical and programmatic accessibility to employment and training services
 - 15 percent of state VR funding to provide **transition** services to youth with disabilities
 - Committee to advise Secretary of Labor on strategies to increase competitive integrated employment
 - VR state grant programs will engage employers to improve participant employment outcomes

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Ticket to Work and Work Incentives Improvement Act (TWWIIA)

- Consumers receiving **SSI and SSDI** get “ticket” to purchase services from employment networks
- Outcome based payment to networks
- Clients still eligible for VR
- **Money for technical assistance**
- Longer period of Medicare benefits after cash payments cease due to income and possible continued Medicaid eligibility for SSI (up to states)



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Administration on Intellectual and Developmental Disabilities

- DD Act
- Eligibility for services is determined by the designated agency in the state
- State Councils on Developmental Disabilities
- Individual Program Plan (IPP)
- Condition must arise prior to age 22
- Condition expected to continue indefinitely



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Other AT Related Legislation

- Fair Housing Act
- Hearing Aid Compatibility Act
- Television Decoder Circuitry Act
- Telecommunications Act
- Air Carrier Access Act
- Developmental Disabilities Assistance and Bill of Rights Act
- Older Americans Act

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Funding

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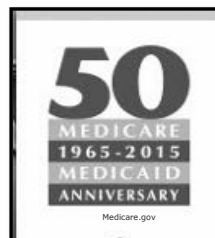
Common AT Funding Sources

- Medicaid
- Medicare
- Private Insurance
- State Vocational Rehabilitation Agency
- Workers' Compensation
- Educational Systems (IDEA, IDEIA)
- Children's Rehabilitation or Medical Services
- Developmental Disabilities Programs
- Department of Veterans' Affairs
- Social Security Disability

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Medicaid

- Established by Congress in **1965** as Title 19 of the Social Security Act
- The **largest single funding source for AT devices** in most, if not all, states
- State Medicaid programs, including the optional Home and Community Based Waiver programs
- Medicaid is best described as a vendor payment program



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Medicaid: Eligibility Criteria

- Three-part test for determining the right to Medicaid-funded Durable Medical Equipment (DME)
 1. The individual must be **eligible** for Medicaid
 2. The requested item must fit within at least one **required services category** or an optional category that is covered in the state
 3. The requested item must be **medically necessary** for the individual requesting it

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Medicaid: Eligibility Criteria

1. The individual must be **eligible** for Medicaid
 - Supplemental Security Income (SSI) recipient or state specific criteria
 - Medically needy
 - Medicaid buy-in for working individuals
 - Optional home and community based services waivers

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Medicaid: Eligibility Criteria

2. The requested item must fit within at least one **required services category** or an optional category that is covered in the state

- Mandatory Service Categories for AT/DME Funding
 - Home health care services (medical supplies, equipment and appliances)
 - Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) for children under 21



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Medicaid: Optional Category

- Optional Service Categories for AT/DME Funding
 - Home health care
 - Intermediate care facilities
 - Occupational therapy
 - Physical therapy
 - Preventive services
 - Prosthetic devices
 - Rehabilitation services
 - Speech, hearing and language therapy

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Medicaid: DME Definition

- Many states **define DME** as equipment with the following characteristics:
 - Can withstand repeated use
 - Is primarily and customarily used to serve a medical purpose
 - Generally not useful to a person in the absence of illness or injury
 - Is appropriate for use in the home

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Medicaid: Eligibility Criteria

3. Medical Necessity

- The Medicaid Act provides funding for medical care, rehabilitation and other services for eligible individuals "to meet the costs of **necessary medical services**"
- In operating its Medicaid program a state "may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures"
- The Letter of Justification should support Medical Necessity

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Medicare

- **Medicare** is the federal government program that provides health care coverage for those **65 or older, or have a disability, regardless of income**
- Part A - **Hospital Insurance**
 - Generally free
- Part B - **Supplemental Medical Insurance**
 - Premium based on income
- Part D - Prescription **Drug Benefit**
 - Premium

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Medicare: Eligibility

- U.S. **citizen** or have been a permanent legal resident for 5 continuous years,
- AND
- **65** years or older.
- OR
- Under 65, **disabled** and have been receiving Social Security Disability Insurance (SSDI) for at least 24 months.
- OR
- Receiving continuing **dialysis** for permanent kidney failure or need a kidney transplant.
- OR
- Have **Amyotrophic Lateral Sclerosis** (ALS-Lou Gehrig's disease)

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Medicare: DME

- Equipment must:
 - Withstand **repeated** use
 - Primarily serve a **medical** purpose
 - Generally not be useful to a person without an illness or injury
- Categories
 - Inexpensive or routinely purchased equipment
 - Items requiring frequent and substantial servicing
 - Prosthetic and orthotic devices
 - Capped rental items
 - Oxygen and oxygen equipment
- Payment Rates
- Competitive Bidding

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Vocational Rehabilitation: Eligibility Criteria

- An individual must be **disabled** and require VR services
"to prepare for, secure, retain or regain employment"
- Evaluation of Eligibility
- Written plan setting forth the individual's employment goal and the specific services to be provided, was Individualized Written Rehab Plan (IWRP), now **Individualized Plan for Employment (IPE)**
- Comprehensive Assessment
 - May also include a referral for the provision of rehabilitation technology **services** "to assess and develop the capacities of the individual to perform in a work environment."
- Informed Choice

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Vocational Rehabilitation: Services

- Assessment
- Counseling
- Training
- Diagnosis and treatment of physical or mental impairments to reduce or eliminate impediments
 - To the extent financial support is not available from other sources
- Transportation
- Personal Assistance
- Supported Employment
- Assistive Technology

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Vocational Rehabilitation: Assistive Technology

- **Evaluation** of needs
- **Purchasing**, leasing, or otherwise providing for the acquisition of assistive technology devices
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices
- Coordinating and using other therapies, interventions, or services with assistive technology devices
- **Training** or technical assistance for the consumer
- Training or technical assistance for professionals

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Worker's Compensation

- A **system of statutes enacted by each state** that provides **medical, lost time and permanent disability benefits** for employees hurt in the scope of their employment
- Employees **give up their right to sue** employers directly in exchange for assured benefits. Employees don't have to prove negligence or freedom from contributory negligence in order to collect benefits.
- States have **guarantee funds** that take over benefits when an carrier goes bankrupt

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Educational Systems

- Free and Appropriate Public Education
 - Available to all students with disabilities aged 3 through 21
 - Student must meet the definition of one of several enumerated disabilities
 - Must be at **no cost** to parents or student
 - Does not mean a district must provide the "best" education
- Least Restrictive Environment
- Individualized Education Plan
- Individualized Family Service Plan
- This may include **funding an AT device**

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Educational Systems

- Exception: AT device does not include a medical device that is surgically implanted or the replacement of such device (cochlear implant exception)
- AT can assist students to remain in the Least Restrictive Environment
- Home use if needed to ensure Free and Appropriate Public Education
- **School owns** the assistive technology
- VR may purchase AT when transitioning
- Each State Educational Agency must adopt the National Instructional Materials Access Standard (NIMAS) to ensure that blind and other persons with print disabilities receive instructional materials in a timely manner

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Private Sources of Funding

- Personal resources
- Revolving loan programs
- Private health insurance
- “Tech Loans”
- Local service clubs, i.e. Rotary
- Private foundations
- Volunteer organizations

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Documentation: Written Justifications

- Requirements vary by funding source
- Demonstration of need
- Terminology
- Use of photos/video
- The assessment provides the necessary information for this process

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Conclusion

- Legislation may not be very exciting...
- It is important that we are aware of legislation and policy to be aware of the rights and resources available to clients with disabilities
- It is important to be aware of potential funding sources and their requirements when recommending AT

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Resources

- Assistive Technology Legislation, University of Buffalo
 - <http://atto.buffalo.edu/registered/ATBasics/Foundation/Laws/atlegislation.php>
- Assistive Technology Laws
 - <http://www.Idonline.org/article/35384/e> Technology Laws, Family Center on Technology and Disability
- Legal Mandates for Assistive Technology, Georgia Project for Assistive Technology
 - <http://www.gpat.org/Georgia-Project-for-Assistive-Technology/Pages/Legal-Mandates-for-Assistive-Technology.aspx>

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Thank you!

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